

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-013485

10/11/2011

HONORABLE HUGH HEGYI

CLERK OF THE COURT
K. Ballard
Deputy

CANYON PHYSICIANS II INC

JOSEPH A SCHENK

v.

LESLIE EDISON, et al.

ROBERT L EARLE

JILL HULSIZER

MATTER TAKEN UNDER ADVISEMENT

Courtroom: ECB-611

1:34 p.m. This is the time set for Comprehensive Pretrial Management Conference. Plaintiff/Counterdefendant Canyon Physicians II, Inc. and Counterdefendants Behcon, Inc., Dennis Pickering, Robert L. Pickering, Susan Pickering, and Timothy J. Pickering are represented by Counsel Joseph A. Schenk. With Mr. Schenk is Stephanie Loquvam, a law clerk from Mr. Schenk's office (who has recently passed the bar examination). Defendant/Counter-claimant Leslie Edison is represented by Counsel Robert L. Earle.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

The Court advises counsel that it received Non-Party J. Robert Kosiorek, M.D.'s October 7, 2011 Objection to Subpoena and Emergency Motion to Quash via fax earlier today and advised counsel for Dr. Kosiorek that the motion would be addressed at today's hearing.

1:37 p.m. Non-Party J. Robert Kosiorek, M.D. is now represented by Counsel Jill M. Hulsizer.

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Defendant's counsel advises the Court that he filed a response to the Objection and Motion to Quash yesterday. As that pleading has not yet been docketed by the Clerk's Office, a copy of the response is provided to the Court for review.

Oral argument is presented on the Objection and Emergency Motion to Quash.

During the course of oral argument, trial counsel are advised to bring to trial all of their disclosure statements, in chronological order, and to be familiar with them so that disclosure objections can be resolved quickly during trial.

Oral argument is briefly held regarding Defendant's verbal objection to Plaintiff's counsel participating in the oral argument regarding Dr. Kosiorek's Motion to Quash.

IT IS ORDERED overruling Defendant's objection to Plaintiff joining the Motion to Quash arguments.

Oral argument on the Motion to Quash continues.

IT IS ORDERED sustaining Dr. Kosiorek's October 7, 2011 Objection to Subpoena, granting the Motion to Quash, and denying Defendant's Motion to Permit Telephonic Testimony, contained in Defendant's October 10, 2011 Response to the Objection and Motion to Quash.

Counsel for Dr. Kosiorek addresses the Court regarding his request for sanctions contained within the October 7, 2011 Objection and Motion to Quash. Court and counsel briefly discuss the same.

IT IS ORDERED no later than **5 p.m. on October 18, 2011**, Defendant shall file a response to the request for sanctions, and within one week thereafter, Dr. Kosiorek shall file a reply. The matter will be deemed under advisement upon receipt of the reply.

2:25 p.m. Counsel for Dr. Kosiorek is excused from the remainder of these proceedings.

Plaintiff's counsel provides the Court with an updated, draft Joint Pretrial Statement, which has not yet been filed. In that regard, Defendant's counsel provides the Court with proposed revisions/additions to that draft.

As it appears there will not be enough time remaining this afternoon to resolve all of the pretrial issues,

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IT IS ORDERED this conference shall continue on **October 12, 2011 from noon to 3 p.m.** in this Division. Counsel shall meet at 11:30 a.m. the morning of October 12, 2011 to attempt to narrow the issues.

Discussion is held regarding the witness lists and trial time estimates.

Both parties request the presence of a court reporter during the course of the trial.

The Court addresses Defendant's counsel regarding the proper procedure for mailing and certifying same on pleadings filed with the Court.

Discussion is held regarding prior rulings in this case and the filing of Defendant's March 21, 2011 Second Amended Answer and Counterclaim.

On the Court's motion,

IT IS ORDERED striking the March 21, 2011 Second Amended Answer and Counterclaim based on the Court's February 10, 2011 ruling denying Defendant's February 2, 2011 Motion for Leave to Amend Answer and Counterclaim

IT IS FURTHER ORDERED directing Defendant's counsel to review the draft Joint Pretrial Statement provided to the Court today and send appropriate revisions to Plaintiff's counsel, electronically in Word or WordPerfect format, no later than **10 a.m. on October 12, 2011.**

IT IS FURTHER ORDERED the parties shall file a final Joint Pretrial Statement by **noon on October 12, 2011.**

In the event there are difficulties sending the revisions to Plaintiff's counsel or in completing and filing the Joint Pretrial Statement as ordered, the parties shall bring four copies of the documents to the continued hearing on October 12, 2011.

3:06 p.m. Court stands at recess.

3:16 p.m. Court reconvenes with respective counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

The time allotted for trial is confirmed. Trial will begin at 9:30 a.m. on October 18, 2011 and the case will be submitted to the jury for its consideration no later than 4:30 p.m. on October

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26, 2011, with the available trial time being divided equally between the sides. Trial will not be in session on Friday, October 21, 2011.

Trial days and hours are normally Mondays through Thursdays, 9:30 a.m. to 4:30 p.m. with lunch recess from noon to 1:30 p.m.

As the Court has not yet received Defendant's proposed jury instructions or proposed voir dire, which counsel advises were filed, counsel is directed to follow up on the filing issue and bring four sets of the instructions and voir dire with him for tomorrow's continued hearing.

The Court reviews the voir dire procedure with counsel. With regard thereto, counsel are advised that they should limit their follow-up voir dire to approximately 15 – 30 minutes.

The jury will consist of eight jurors and one alternate for a final panel of nine jurors. On the parties' agreement, the alternate will not deliberate. Each side will be permitted five peremptory strikes.

The Court notes that the Rule of Exclusion of Witnesses has been invoked (by Defendant as reflected in the unfiled Joint Pretrial Statement).

Defendant is instructed to bring four sets of exhibits to the continued hearing on October 12, 2011.

3:28 p.m. Court stands at recess.

3:35 p.m. Court reconvenes with respective counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

The Court advises counsel that they will be responsible for providing any audio/visual equipment as necessary.

Common witness objections are discussed.

Defendant's September 29, 2011 Motion to Reconsider Ruling on Plaintiff's Motion in Limine is discussed. In that regard, Plaintiff's counsel seeks clarification regarding the Court's intent to consider the Motion to Reconsider as Plaintiff has not had an opportunity to file a response thereto.

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IT IS ORDERED granting Motion to Reconsider insofar as it requests that the court reconsider its prior decision concerning Plaintiff's August 29, 2011 Motion in Limine. Argument is presented.

IT IS ORDERED granting Plaintiff's August 29, 2011 Motion in Limine for the reasons set forth on the record.

Discussion continues regarding the common witness objections.

The Court inquires if there are common objections to exhibits that can be discussed at this time. In that regard, Defendant's counsel advises the Court that he has filed a motion to exclude evidence. That motion not appearing on the Court's Docket, the Court directs counsel to follow up on the filing of that motion and to bring four sets of the motion with him for tomorrow's continued hearing.

A copy of the Motion to Exclude is provided to the Court at this time.

Discussion is held regarding the motion.

On the Court's motion,

IT IS ORDERED marking the unfiled Joint Pretrial Statement discussed earlier today as exhibit 1 to this hearing and receiving same in evidence for purposes of this hearing only.

IT IS FURTHER ORDERED marking Defendant's Motion to Exclude as exhibit 2 to this hearing and receiving same in evidence for purposes of this hearing only.

Discussion continues regarding the Motion to Exclude.

The Court advises counsel of its thoughts and inclinations regarding the Motion to Exclude. Based thereon, the Court requests that counsel confer further regarding these issues.

Plaintiff's counsel advises the Court that he was informed earlier this afternoon that Defendant has filed another motion to consolidate. Court and counsel discuss the same as well as the prior denial of the previous motion to consolidate filed in this matter.

The Court advises Defendant that it will not entertain another motion to consolidate at this time.

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The Court addresses counsel regarding the issues for trial and requests that counsel meet and confer prior to the continued hearing on October 12, 2011 in an effort to expedite the issues remaining to resolve tomorrow afternoon.

5:05 p.m. Court stands in recess until noon on October 12, 2011.

FILED: Exhibit Worksheet

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.